

**SEET PENG YAM v.
MOHAMED MOHIDIN HABIBULLAH**

[O.C.J. (Rajah J.) 15 March 1988]

[Singapore — Suit No. 10802 of 1985]

Land Law — Conveyancing — Legal requisitions — Reply to — Option agreement providing for refund of deposit if replies to legal requisitions are unsatisfactory — 15.5% of property affected by road widening line — Whether this constitutes an unsatisfactory reply — Singapore Law Society's Conditions of Sale 1981, conditions 15, 29 & 33.

By an option agreement, the plaintiff agreed to sell and the defendant agreed to buy a piece of property. Term 11 of the option agreement states that the purchase is subject to the purchaser's solicitors receiving "satisfactory replies" to the legal requisitions from the various government departments and if the replies are not satisfactory, the vendor shall refund the 10% deposit to the purchaser.

Subsequently, the defendant's solicitors received a reply from the Development and Building Control Division (DCB) that a road line is affecting the property. On inspecting the road plan from the Public Works Department (PWD), it was also noted that a substantial area of the property was affected and the road widening line cut across a part of the front porch of the house. The defendant claimed that the answer from the DCB was unsatisfactory and that therefore he was absolved from completing the contract. The plaintiff claims, *inter alia*, for specific performance of the option agreement, and the defendant counter-claimed for the refund of the 10% deposit.

The only question for the court to decide is whether the reply by the DCB is a reply which can be construed to mean as being not satisfactory within the meaning of term 11 of the option agreement. According to the plaintiff, about 15.5% of the total area of land was affected by the road line.

Held, dismissing the plaintiff's claim: the defendant wanted to purchase a property which has a fair amount of land attached. In these circumstances, the government's reply to the requisitions was not satisfactory and that the defendants were entitled to the refund of the 10% deposit.

CIVIL SUIT.

Govindarajulu Asokan for the plaintiff.

Anamah Tan (Mrs) for the defendant.

Cur. Adv. Vult.

Rajah J.: By an option agreement dated 16 June 1984, the plaintiff agreed to sell and the defendant agreed to buy No. 91 Still Road for \$468,000 subject to the Singapore Law Society's Conditions of Sale 1981 (Law Society's Conditions) and the terms of the option agreement. Conditions 15 and 33 of the Law Society's Conditions read:

A "15. The property is sold subject to any government road, back lane or other improvement scheme whatever affecting the same, whether mentioned in the particulars or not, and the purchaser shall be deemed to have full knowledge of the nature and effect thereof, and shall make no objection or requisition in respect thereof."

B "33. In case of conflict or repugnancy between the above conditions and any special conditions imposed on any sale, the special conditions shall prevail and the above conditions shall be deemed to be modified so far only as is necessary to give full effect to such special conditions."

Term 11 of the option agreement reads:

C "The purchase is subject to the purchaser's solicitors receiving satisfactory replies to the legal requisitions from the various government departments and in the event that the replies to the legal requisitions are not satisfactory, the vendor shall refund to the purchaser the 10% deposit forthwith."

D By condition 29 of the Law Society's Conditions, it is provided that if from any cause whatever (other than by reason of wilful default on the part of the vendor) the purchase is not completed by the day fixed for completion, the vendor is entitled to serve on the purchaser a notice in writing to complete the purchase within 21 days after the day of service of the notice (excluding the day of service), time being of the essence. The said condition 29 further provides that if the purchaser does not comply with the terms of the said notice served by the vendor, then the vendor is entitled to, *inter alia*, avail himself of the rights and remedies available to him at law or in equity.

G The day fixed for completion was 15 October 1984. In compliance with the option agreement, the defendant paid the plaintiff the sum of \$46,800, being the 10% deposit on the purchase price, on 4 July 1980.

H The defendant, pursuant to term 11 of the option agreement, sent out through his solicitors legal requisitions to various government departments. On or about 24 July 1984, his solicitors received a reply from the Development Control Branch of the Development and Building Control Division that a road line is affecting the said property and that the said property is zoned under the master plan as "residential/major traffic route".
I Thereupon, the defendant's solicitors applied for and received a road interpretation plan from the Public Works Department when it was noted that a substantial area of the said property was affected by a road widening line and that the road widening line cut across a part of the front porch of the said house. In the circumstances, the defendant claims

that the answer from the said Development Control Branch to be unsatisfactory and that therefore he is absolved from completing the contract.

Pursuant to the said term 11, the defendant's solicitors gave notice to the plaintiff's solicitors on 14 September 1984 stating that the defendant would not proceed with the purchase and demanded of the plaintiff the refund of the sum of \$46,800 forthwith, but the plaintiff has failed to refund to the defendant the sum of \$46,800.

By letter dated 16 October 1984, the plaintiff through his solicitors served a notice pursuant to the said condition 29 on the defendant requiring him to complete the purchase within 21 days from the date of the said letter but the defendant has refused to complete the said purchase.

The plaintiff says that he was always ready and willing to complete the said purchase, but that notwithstanding his repeated requests, the defendant has refused to take steps toward completion of the said purchase.

In the circumstances the plaintiff claims:

- (a) specific performance of the said option agreement;
- (b) all necessary and consequential accounts, directions and inquiries;
- (c) damages for breach of contract in lieu of or in addition to specific performance;
- (d) a declaration that he is entitled to a lien on the said property for the unpaid balance of the purchase price payable under the said agreement.

Alternatively:

- (e) a declaration that the plaintiff is absolved from future performance of his obligations under the said agreement;
- (f) damages for breach of contract;
- (g) a declaration that the deposit of \$46,800 has been forfeited to the plaintiff;
- (h) further or other reliefs;
- (i) costs.

The defendant in his defence relies on term 11 of the said option agreement and counterclaims from the plaintiff the refund of the 10% deposit and interest thereon at 10% per annum from 14 September 1984 until date of payment.

A It was the plaintiff's case throughout the trial that the defendant is estopped from rescinding the contract on the ground that the defendant had, prior to the signing of the option agreement, agreed to purchase the property notwithstanding its being affected by a road widening line.

B The plaintiff testified as follows:

C "In 1984 I engaged the services of Balmoral Properties Private Limited. They are housing brokers. They are full time brokers. Their office was at Finlayson Green, Asia Insurance Building (AIA). I spoke to Mrs Catherine Lee, a director of the company. I told her that the front portion would be acquired for a road widening scheme but I did not tell the extent of the widening or the date of acquisition as I did not receive any notice of it. I gave her full particulars such as four rooms, a big kitchen and house nicely renovated and maintained. I wanted to sell it with vacant possession. (p. 4 of the notes of evidence)

D In May 1984 Mr. Thomas Chua called me over the telephone. He is the housing broker of the company. We made arrangements for him to see the house and to obtain particulars of the house. (Thomas Chua identified.) I told him of the price at \$590,000 and gave all particulars of the house. I also told him that the house would be affected by a road widening scheme. I told him that he should let all prospective buyers know about it. I told him that I did not know the extent or date of acquisition as I had received no notice of acquisition. I told him all this when he came to view the premises." (p. 5 of the notes of evidence)

He went on to say:

F "Pursuant to this advertisement there were buyers who came to see the house. I did not see some of them as I was working at the time they came. They were not keen to buy because of the road widening scheme and the price. Then at the request of Thomas Chua I reduced the price to about \$500,000. Later on the defendant was one of the parties who responded to a newspaper advertisement and came and viewed the house. I was not there then. My mother was in at the time. I told my mother about prospective buyers visiting the house. I also told her to tell everyone who came in to view the house about the road widening scheme.

G Sometime in early June 1984 the defendant himself came to view the house. My mother showed the defendant around and within the house. My mother also told me that she told him about the road widening scheme of the house. The intending purchaser spoke in Malay and my mother communicated with him in Malay. After 17 September 1984 I told my mother that the defendant has aborted the sale because of substantial acquisition and would not buy the property. She was surprised as she had told the defendant about the road widening scheme." (p. 5/6 of the notes of evidence)

I On 16 June 1984 Thomas Chua called me from the defendant's office in Changi and told me that the defendant would like to discuss with me about the purchase of the house. I told Thomas Chua that the defendant must be serious about the purchase. Thomas Chua told me that despite the road widening scheme the defendant was

interested and he would like to discuss with me the price. Then I agreed to it. When the defendant, his friend whom I later ascertained to be his attorney and the defendant's father came to the house I showed them around. The defendant is the one sitting in court. After the tour of the house we sat down in the living room. (Ebrahim Marican, the attorney, identified.) All six were present — the three of them, Thomas Chua, myself and my wife. My father and mother were not in at that time. At that discussion I told them they need to be aware that the front portion of the house would be affected by the road widening scheme. I suggested \$475,000. During the negotiations all six of us left to view the front portion of the house. The attorney asked me how much would be acquired for the road widening scheme. I told them I did not know the extent or of the date of acquisition. The attorney then replied 'at the very most only the garden would be acquired'. The defendant and the father did not express disapproval. (Portion possibly to be acquired marked in red on AB81.) Thereafter we (six of us) went back to the living room. My wife specifically reminded them of the road widening scheme." (pp. 6/7 of the notes of evidence)

Continuing his evidence he went on to say:

"Some time in the first week of July 1984 a valuation officer of the Tat Lee Bank came to my house to view and value the property at the request of the defendant. Thereafter after the inspection the valuer left. A few days after the valuer's visit I contacted the defendant by telephone and he did not sound happy and grumbled that the bank had valued the property only at \$420,000. I told him it is normal for the bank to value the property at that level for mortgage purposes and that it was normal for a bank to grant loans of not more than 70% of its valuation. I felt uneasy about the grumbling. I later spoke to my solicitor (Mr. Foo) and he said that it is best to write to the defendant's solicitor to confirm that he was advised and had knowledge of the road widening scheme and that he would not consider the road widening scheme to be unsatisfactory and that he would proceed with the purchase notwithstanding the road line. Thereafter Mr. Foo wrote to Mr. Joseph Linus, the defendant's solicitor. I told Mr. Foo that I had a property in mind and that I wanted to purchase that property. I told him to obtain written confirmation as soon as possible because I could not afford to end up with two properties. Mr. Foo sent as many as seven letters and telexes to the defendant's lawyer apart from telephone conversations wanting him to confirm.

AB25 — 14 September 1984. First time that the defendant notified that he does not wish to proceed with the sale." (pp. 9/11 of the notes of evidence)

Mr. Chua, the broker, the plaintiff's wife and his mother were called as witnesses for the plaintiff and they gave evidence supporting the evidence of the plaintiff, evidence that each of them had told the defendant that the property was affected by a road widening line.

As against this, the defendant and his attorney Ebrahim Marican (DW2) denied any such information with regard to a road line passing from the

A plaintiff or members of his family to him or any member of his family. Their evidence was that they were totally unaware of the road widening line and that they only came to know of this when the requisitions had been returned by the government department. While admitting to being familiar with the area, they denied knowing that Still Road was affected by a road line.

The defendant and DW2 (the defendant's attorney) maintained that they wanted to buy a property with a spacious compound for the defendant's sister's wedding and possibly her occupancy. They denied that their refusal to buy the property was because the property had fallen in value. It is not disputed by the plaintiff that soon after the defendant had refused to purchase the property the defendant's family purchased a compound house in the vicinity for the sum of \$800,000.

The defendant contends that at the time he entered into the contract to purchase the property neither the plaintiff nor any member of the plaintiff's family nor anyone on his behalf had told the defendant or any member of his family about the property being affected by a road widening line. I have given anxious thought to this aspect of the case and on balance I have come to the conclusion that the defendant's evidence on this aspect of the matter is the more probable in the particular circumstances of this case. From the plaintiff's evidence, we know that the plaintiff himself was aware of the road widening line from the time he had bought the property from his mother. Messrs. Rodyk & Davidson were his solicitors in the purchase from his mother. The plaintiff, from his evidence, is quite clearly a careful and competent person. From a person who showed extreme anxiety for his intending purchasers to know of the road widening line before the purchase agreement was signed, one would have expected that he would not have signed the sale contract in the manner in which he did without consulting his solicitors or seeing to it that the sale contract had something specific in it about the purchaser having full knowledge of the road widening line.

As to the question of estoppel relied on by the plaintiff, this plea does not now arise in view of my finding that the defendant did not know anything of the road widening line prior to his signing of the option agreement. In any event, this is not a case where the defendant by his knowledge could have worsened or did worsen the plaintiff's position as vendor.

It is also the defendant's contention that the contract for sale of No. 91 Still Road, having been reduced to writing, the plaintiff cannot now be allowed to add to or vary the said contract and for this he relies on section 93 and proviso (d) of section 94 of the Evidence Act. Section 93 and the said proviso, in my view, make it fairly clear that any contract, being a contract which to be enforceable has to be in writing, cannot by virtue of the provisions of section 93 and proviso (d) of section 94 be varied by oral agreement.

This being so the only question for the court to decide is whether the reply by the said Development Control Branch as to the property being affected by a road widening line is a reply which can be construed to mean as being not satisfactory within the meaning of the said term 11. In this case, all the land comprising the front of the property up to the front of the porch is affected by the road line and could have been acquired by the government.

I accept the evidence of the defendant that he wanted to purchase a property which has a fair amount of land attached. In the instant case, according to the plaintiff, about 15.5% of the total area of land was affected by the road line. In these circumstances I consider that the government reply to the requisitions was not satisfactory and that the defendants are entitled to the refund of the 10% deposit, namely, \$46,800.

The plaintiff's claim is therefore dismissed with costs. There will be judgment for the defendant on their counterclaim for \$46,800 and interest thereon at 10% from 14 September 1984 to date and costs.

Order accordingly.

Solicitors: *Rodyk & Davidson; Ann Tan & Associates.*

TAN SWEE ENG v. ASSOLAND PTE. LTD.

[A.C.J. (Thean J.) 23 April 1987]

[Singapore — District Court Appeal No. 20 of 1985]

Landlord and Tenant — Business premises — Sale of business by tenant — New owner granted "licence" — Whether tenancy or licence created — Principles applicable.

The plaintiffs acquired the premises in question in 1973 from one of their directors, Tan Kim Hin ("Tan"), but the legal title to the property was not transferred to them until 9 June 1981. At the time when the plaintiffs acquired the

A said premises, one Lim Joo Song ("Lim") was a tenant thereof, carrying on thereat the business of a grocery shop. In November 1976, Lim wanted to vacate the said premises and asked for consent from the plaintiffs to transfer his tenancy to another person. The plaintiffs refused to give such consent. However, they were prepared to allow another person to occupy the said premises on payment of an annual sum and on condition that when they required the same for redevelopment the occupier would vacate and deliver to them possession of the said premises. Lim then introduced the defendant to the plaintiffs and negotiation took place between the defendant and the plaintiffs' director, Ngo Soo Hing. Ngo said that it was agreed that she would take a licence of the said premises on a temporary basis and they both instructed a solicitor to prepare an agreement to give effect to that intention.

On 24 November 1976, two agreements were signed by the parties concerned. One agreement (the sale agreement) was made between Lim and the defendant whereby Lim agreed to sell to the defendant for a sum of \$18,000 the business of a grocery shop then carried on by him at the said premises together with all the trade fixtures, implements, furniture and tables used in connection with the said business. The other agreement, expressed as a licence agreement, was made between Tan who was then the registered proprietor of the said premises and the defendant. By the licence agreement, Tan granted to the defendant "a licence for a period as stated in clause 2 of this agreement for the purpose of a grocery shop". Under clause 2, the "licence" was expressed to be for an indefinite period until such time as the plaintiffs required the said premises for redevelopment or renovation.

The consideration payable by the defendant under the agreement is \$300 per annum payable in advance. There was contained in clause 7 the following provision:

"7: It is hereby agreed between the parties hereto that this agreement constitutes a licence and shall be in no way be construed or conferred a tenancy upon the licensee and that possession of the said shop premises is retained by the licensor subject however to the rights created by this licence agreement."

The sum of \$18,000 was paid to Lim on the signing of the sale agreement and the defendant took over the business from Lim together with all things and articles purchased. The defendant was let into possession of the said premises and since then the defendant had been in possession of the said premises, carrying on thereof the business of a grocery shop. On 30 January 1981 the plaintiffs caused to be given to the defendant four months' notice terminating the "licence" and offering to pay, on an *ex gratia* basis, a sum of \$5,000 as removal expense in terms of the licence agreement. The defendant refused to comply with the notice and the plaintiffs instituted the present proceedings against the defendant claiming for vacant possession of the said premises. The District Court allowed the plaintiffs' claim. The defendant appealed. The issue before the court was whether the agreement created a tenancy or a licence.

Held, allowing the appeal: (1) the relationship between the parties is determined by law and not by the label which they chose to put on it;